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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/709,694	11/10/2000	Kenneth A. Sumrall	067681.0103	4625

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EXAMINER

CHRISTMAN, KATHLEEN M

ART UNIT	PAPER NUMBER
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3713

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/709,694

Applicant(s)

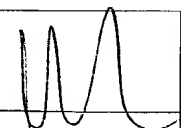
SUMRALL ET AL.

Examiner

Kathleen M Christman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-83 is/are pending in the application.
- 4a) Of the above claim(s) 1-22 and 47-79 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-46 and 80-83 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

In response to the amendment filed 08/13/2004, claims 1-80 and newly added claims 81-83 are pending; claims 1-22 and 47-79 remain withdrawn from consideration; claims 23-46 and 80-83 remain under consideration. The examiner notes that the status identifier for claim 80 in the application is improper and should read, "previously presented".

Response to Amendment

1. The affidavit and evidence filed on 08/13/2004 under 37 CFR 1.131 has been considered but is ineffective to overcome the Linton (US 6496681 B1) reference. The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the Linton reference. The mere submission of a listing of file names does not provide sufficient evidence to impart their functionality or contents. Applicant has provided no evidence to support the assertion that these files perform the methods claimed.

2. The affidavit under 37 CFR 1.132 filed 08/13/2004 is insufficient to overcome the rejection of claims 1-22 and 47-80 based upon the combinations of Linton, Lee and Oh as set forth in the last Office action because: the affidavit fails to provide sufficient and convincing evidence of commercial success. Mere allegations that a product has had commercial success and that such is due to the "features" of the claimed invention is not legal evidence. The applicant bares the burden of providing sufficient legal evidence to show that commercial success existed, a nexus between the claimed invention and the product used supported by the commercial success and evidence that the commercial success is based upon the features of the claimed invention and not outside considerations (such as marketing).

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1; 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. **Claims 23-41, 43-45, 81 and 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al (US 6064856) in view of Linton (6496681 B1).** Regarding **claim 23**, the method steps of associating the learning activity with at least one student; receiving a release instruction for the learning activity; and providing access to the learning activity for the student associated with the learning activity, is corresponds to Lee et al's description of assigning lesson segments, see col. 5: 27-37. The learning activity including an assessment procedure, **claim 23**, is referred to as a "quiz subroutine" by Lee et al and is described in col. 7: 10-18, the section further teaches the ability to receive responses to the questions asked, and grading of the quiz based upon the responses. Regarding **claim 26**, the questions of the quiz are associated with a "particular lesson segment" and further described as having the ability to test the student's comprehension of the learning material. Having a student comprehend the learning material presented to them is an inherent objective of the teaching process. The mastery level, as in **claim 27**, is described by Lee et al as a "threshold" value and is taught at col. 7: 32-35 and col. 10: 1-5. The learning activities include procedures; these procedures may include either assessment procedures of content procedures, as in **claims 29 and 30**, see col. 4: 22-39. Regarding **claims 25 and 28**, Lee et al teaches the use of color-coding in col. 10: 26-32.

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Lee et al fails to specifically teach: that the assessment procedure contains both an objective and a subjective procedure, and that the subjective responses are forwarded to a teacher to grade (as in **claims 23, 31, 39, and 43**) and that the score is provided to at least one of the teacher of the student, a parent of the student, and the student (as in **claims 24, 32**). Concerning the latter, Lee et al does teach that the score is recorded in the student profile, which a teacher is capable of reviewing. Lee further fails to specifically teach "providing a student a plurality of options associated with a class, the options comprising a grade summary option, the grade summary option providing selective access to information associated with a plurality of released learning activities, the information including: release date, due date, and status of each learning activity and any response given by the student and any associated remarks provided by a teacher of the student" as in **claims 23, 31, 39, and 43** (Note: these limitations were added by the amendment filed 12/01/2003).

Linton teaches a learning system and method which includes each of the above limitations. Linton teaches the use of objective questions in through the use of multiple-choice questions, and the use of a subjective procedure through the use of essay or short-answer type questions, see col. 7: 28-32. The answer to the questions being forwarded for review is taught at col. 9: 48-50. The ability for the user to see the result of their quiz is taught at col. 9: 55+. The ability for a user to have various options regarding a class is taught in col. 6: 64-67. This interface including a grade summary report, were the grades summary report includes release date, due date, status of each lesson, any response given by the student, and any associated remarks (feedback) given by the students teacher is taught in at least col. 7: 42-47, col. 7: 65 – col. 8: 8, col. 9: 54-61, and col. 10: 58-65.

Regarding the newly added limitation of "electronically providing a score for the assessment to a parent of the student", as now recited in claims 24, 32, 81 and 82, (limitations was added in the amendment dated 08/13/2004). Lee et al clearly provides for printed versions of the scores and progress reports to be taken home be the student to their parents, col. 9: 18-20. However, Lee does not provide for this communication to be in an electronic form. However, Linton clearly teaches that communications regarding assessments can be sent via e-mail, in lieu of or in addition to printed copies, see at least col. 9: 52-65.

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It would have been obvious to one of ordinary skill in the art to incorporate the question, grading and reporting features of the Linton system into the Lee et al system so as to provide a student with detailed feedback concerning their progress in an educational course.

Claims 31-38 are a system corresponding in scope to claims 23-30, respectively, and are rejected for the same reasons. The elements of claims 39-41 and 43-45 have been addressed above, and are rejected for the same reasons.

4. **Claims 42 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al (US 6064856) in view of Linton (US 6496681 B1) further in view of Oh (US 6190178 B1).** The combination of Lee et al and Linton teaches all aspects of the claimed invention as shown above except for "accessing the learning activity through a device comprising no system-specific software or hardware, the device operable to display Hypertext Markup language (HTML)".

Oh clearly shows this limitation. In fact the Oh patent is designed to specifically provide this type of system. Although Oh does not specifically mention HTML it is old and well known, and admitted by applicant, that web pages are commonly written in HTML. It would have been obvious to one of ordinary skill in the art to implement either the Lee et al or Linton system on the Oh system so as to increase the ability for a user to conveniently use the system.

5. **Claims 80 and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lotvin et al (US 5907831) in view of Linton (US 6496681 B1) further in view of Cook et al (US 5727950).**

Lotvin et al teaches a computer readable medium including instructions operable to: associate a learning activity with at least one student (the parent assigning activities to their children, step 304 of Figure 3); the learning activity including at least one assessment procedure (element 525 of Figure 5B); receive a release instruction for the learning activity for and to provide access to the learning activity for the student (elements 500-509 of Figure 5A); receive a plurality of responses for the assessment and generate a score associated with the one or more objective responses (steps 526-528 of Figure 5B); verify user identification and associated password provided by the at least one student (col. 5: 47-63); displaying

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option to the user including a summary of assignments option which includes activities released for the student (Figure 4, element 404), a communication option which results in options allowing the student to communicate electronically with other students (col. 9: 44-45 and col. 10: 38-41); a mail option where the user is resented with a virtual mail (col. 10: 19-36); and the displaying of an advertisement to the student in response to accessing the system (col. 10: 46-59).

Lotvin et al does not present the student with a grade summary option, which presents a grade summary to the student, but does allow for a grade summary to be presented in an electronic form (claim 83) to the parents of the student (col. 8: 61 – col. 9: 20).

Lotvin et al fails to specifically teach that the assessment procedure includes a subjective assessment and an objective assessment and forwarding the responses to a teacher for grading (claim 80); a calendar option which results in presenting a calendar to the student; and the grade summary options which are presented to the student.

Linton teaches the features of the grade summary including the name of the assignment, a description, of the assignment, a grade, and standards for the assignment, are shown in at least Figure 8-10. This interface including a grade summary report, were the grades summary report includes release date, due date, status of each lesson, any response given by the student, and any associated remarks (feedback) given by the students teacher is taught in at least col. 7: 42-47, col. 7: 65 – col. 8: 8, col. 9: 54-61, and col. 10: 58-65. The use of objective questions in through the use of multiple-choice questions, and the use of a subjective procedure through the use of essay or short-answer type questions, see col. 7: 28-32. The answer to the questions being forwarded for review is taught at col. 9: 48-50.

It would have been obvious to one of ordinary skill in the art to incorporate the question, grading and reporting features of the Linton system into the Lotvin et al system so as to provide a student with detailed feedback concerning their progress in an educational course.

Linton further fails to specifically teach the use of a calendar function. Cook et al teaches this feature starting in col. 28, line 64 and col. 43: line 57+. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the calendar features of Cook et al with the

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educational systems of Lotvin et al and Linton so as to provide the student with an organized task list of the assignments given them, as suggested by Cook et al.

Lastly the examiner notes that the above references do not teach the grade summary including the student's overall grade in an associated course and the course average (although the examiner notes that Lotvin provides for this feature in the parent's report). The applicant has admitted this feature as being old and well known in the art. Teachers are known to frequently provide their students with their own grade (such as a test, quiz, or overall score) and the known class average so that a student may gauge their progress against that of their classmates. Doing so is known to encourage students to perform better or give students a sense of self-confidence when they perform well. For these reasons it would have been obvious to one of ordinary skill in the art to allow the students of the Lotvin et al, Linton or Cook systems to view their overall scores and the class average.

Response to Arguments

6. Applicant's arguments filed 08/13/2004 have been fully considered but they are not persuasive.

Response to arguments concerning claims 23-46

The applicant attempted to overcome the rejection firstly through the use of affidavits under 37 CFR §1.131 and §1.132. The affidavits were not considered effective for the reasons set forth above. Secondly the applicant argues that the newly added limitation of electronically providing the scores to the parent of the student, in claims 24, 32, and newly added claims 81-83 is not taught by the prior art and that Lee et al in fact teaches away from the idea. The fact that a reference does not directly teach a feature is not evidence that the invention teaches away from the inclusion of such a feature. Linton clearly teaches the use of e-mail (an electronic communication) as a viable alternative to printed versions of the same material, as shown above.

Response to arguments concerning claim 80

Applicant's addition of the limitations "display an advertisement to the student in response to accessing the system" has overcome the previous rejection as neither Cook et al, Linton, or

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Lee specifically state that the student is presented with an advertisement. However, this feature is clearly shown in the Lotvin reference as it is applied to the claims above.

In addition the examiner notes that the applicant failed to challenge the examiner's taking of official notice that a grade summary commonly includes the student's overall grade in an associated course and the course average. Teachers are known to frequently provide their students with their own grade (such as a test, quiz, or overall score) and the known class average so that a student may gauge their progress against that of their classmates. Doing so is known to encourage students to perform better or give students a sense of self-confidence when they perform well. As such the information is now considered admitted prior art in accordance with MPEP 2144.03, subsection C.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M Christman whose telephone number is (703) 308-6374. The examiner can normally be reached on M-F 8:00-4:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (703) 308-2064. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kathleen M. Christman
October 26, 2004



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PRIMARY EXAMINER
TC3760